

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 12, 2005 Session

EFFIE L. HAYES v. OPAL M. SHAW

**Appeal from the Circuit Court for Hamilton County
No. 03C1193 Jacqueline E. Schulten, Judge**

No. E2004-01851-COA-R3-CV - FILED JANUARY 21, 2005

This lawsuit involves claims by Effie L. Hayes that she lost her house after being defrauded by Roger Strutton. Ms. Hayes has lost each and every lawsuit wherein she has made these allegations in the past, including two in the Hamilton County General Sessions Court, two (now three) in the Hamilton County Circuit Court, and one in the United States District Court for the Eastern District of Tennessee. This is the third appeal this Court has considered of these same claims by Ms. Hayes. We have issued two previous opinions affirming the dismissal of her claims, one in 2002 and another in 2003. The only difference in this lawsuit and the half dozen previous lawsuits is that the property now is owned by Ms. Opal Shaw. Ms. Hayes does not claim Ms. Shaw did anything wrong. Instead, she again makes the same allegations about how she allegedly was defrauded by Mr. Strutton, and now wants the current owner, Ms. Shaw, to return the property to her. The Circuit Court once again dismissed the lawsuit based on principles of res judicata and collateral estoppel. We affirm ... again.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Circuit Court Affirmed; Case Remanded.**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Effie Louise Hayes, *pro se* Appellant.

George L. Foster, Chattanooga, Tennessee, for the Appellee Opal M. Shaw.

OPINION

Background

This is the third appeal from Ms. Hayes which this Court has considered in as many years. Much of the pertinent history from the various cases is contained in this Court's opinion from 2003 styled *Hayes v. Strutton*, No. E2003-00938-COA-R3-CV, 2003 Tenn. App. LEXIS 743 (Tenn. Ct. App. Oct. 27, 2003). We will, therefore, quote liberally from our prior opinion:

On April 6, 1999, Roger and Betty Strutton filed a Detainer Warrant with docket number D441497 in the Hamilton County General Sessions Court against Ms. Hayes. The Struttons sought possession of property located at 1102 Tunnel Boulevard. The Struttons were represented by attorney Gary E. Lester ("Lester"). The Detainer Warrant indicates Ms. Hayes was represented by attorney Randy Russell. A trial took place on June 7, 1999, after which the General Sessions Court Judge entered a judgment for the Struttons restoring them "to the possession of the within described property, for which a Writ of Possession may issue, and court costs are adjudged against" Ms. Hayes. Nothing in the record indicates that this judgment was appealed.

Three days after the General Sessions Court trial, Ms. Hayes filed a separate *pro se* lawsuit against the Struttons for "falsifying a (sic) installment note that was secured by a deed of trust." This lawsuit was filed in the Hamilton County General Sessions Court and its docket number was 444008. The Struttons filed a motion to dismiss this second lawsuit. The General Sessions Court Judge granted the motion, making specific reference to the first lawsuit by stating: "See case # D441497". Nothing in the record indicates that this second judgment was appealed.

Sometime during the following year, Ms. Hayes filed a *pro se* lawsuit in the United States District Court for the Eastern District of Tennessee. Ms. Hayes sued as defendants the Struttons and attorney Lester, as well as Mark G. Rothberger, attorney at law, the Honorable John C. Cook, United States Bankruptcy Judge, and the United States Bankruptcy Court. The record on appeal does not contain a copy of the federal court complaint, although the Struttons and Lester claim it is "virtually identical" to the complaint filed in the present case. In any event, the record does contain an Order and Judgment entered by the United States District Court on September 25, 2000, which states:

(1) The motion by defendants Robert Strutton, Betty Strutton, and Gary E. Lester to dismiss the plaintiff's complaint against them ... is **GRANTED**;

(2) All of the plaintiff's claims brought against defendants Robert Strutton, Betty Strutton, and Gary E. Lester pursuant to 42 U.S.C. §§ 1982, 1983, 1984, and 1985 and Tenn. Code Ann. §§ 39-14-117, 39-11-710, 39-11-711, and 39-11-712 are **DISMISSED WITH PREJUDICE** under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;

(3) The only viable claim which remains before the Court for adjudication is the plaintiff's tort claim of common law fraud being asserted against defendants Robert Strutton, Betty Strutton, Gary E. Lester, and Mark G. Rothberger. The common law fraud claim is **DISMISSED WITHOUT PREJUDICE**. This claim is predicated solely on the substantive law of the State of Tennessee and this Court declines to exercise supplemental jurisdiction over the plaintiff's common law fraud claim pursuant to 28 U.S.C. § 1367.... This is a **FINAL JUDGMENT**¹

The judgment of the federal district court apparently was appealed to the United States Court of Appeals for the Sixth Circuit, but the appeal was later stricken by Ms. Hayes' attorney who had been retained following entry of the adverse judgment in the district court.

On April 6, 2001, Ms. Hayes proceeded to file yet another *pro se* lawsuit. This next lawsuit was filed in the Hamilton County Circuit Court. Ms. Hayes sued the Struttons, as well as attorneys Lester and Rothberger. Although it is extremely difficult, if not impossible, to ascertain the exact basis for Ms. Hayes' lawsuit, it appears several years ago Ms. Hayes filed for bankruptcy after purchasing the property at issue. At one point in her complaint Ms. Hayes claims she satisfied the debt on the property through the bankruptcy proceedings. In the next paragraph, however, she claims she attempted to reopen her bankruptcy "so she could finish paying what she owed." Later in the complaint, Ms. Hayes claims the

¹ Since the Final Judgment makes no reference to Ms. Hayes' claims against the United States Bankruptcy Court or Judge Cook, we can only assume these defendants were dismissed from the lawsuit prior to entry of the final judgment.

Struttons and attorney Lester “defrauded her out of her property by hook and crook by Fraud in Insolvency by intentionally falsifying any writhing (sic) or records relating to the property....” It is not at all clear why a claim was asserted against attorney Rothberger who apparently had some connection to the bankruptcy litigation. In her complaint, Ms. Hayes asserted claims pursuant to Tenn. Code Ann. §§ 39-11-710 - 712, 42 U.S.C. §§ 1982 - 1985, and for fraud. After a motion for judgment on the pleadings was filed, the Circuit Court dismissed the complaint after concluding all of Plaintiff’s claims for statutory violations were barred by the doctrine of res judicata in that these very same claims against the same parties were dismissed with prejudice by the United States District Court for the Eastern District of Tennessee. The Circuit Court also concluded the fraud claim was barred by the doctrine of res judicata in that a “court of competent jurisdiction entered judgments on the merits concerning the same cause of action and involving the same parties in the General Sessions Court of Hamilton County, Tennessee in cases number D441497 and 444008.” Ms. Hayes then appealed the dismissal of her complaint to this Court. On June 11, 2002, this Court affirmed the dismissal of Plaintiff’s claims. *See Hayes v. Strutton*, No. E2001-01765-COA-R3-CV, 2002 Tenn. App. LEXIS 414 (Tenn. Ct. App. June 11, 2002). Ms. Hayes then filed a Rule 11 application for permission to appeal to the Tennessee Supreme Court, which was denied on October 7, 2002.

Ms. Hayes apparently was dissatisfied with both judgments of the Hamilton County General Sessions Court, the judgment of the United States District Court for the Eastern District of Tennessee, the judgment of the Hamilton County Circuit Court, the judgment of this Court, as well as the Tennessee Supreme Court’s refusal to grant her permission to appeal. Accordingly, she filed the present lawsuit in the Hamilton County Circuit Court making the very same allegations as set forth in the previous lawsuits. The defendants in the present case are the Struttons and attorney Lester (“Defendants”). On March 18, 2003, the Circuit Court entered an order after concluding the doctrine of res judicata barred the present lawsuit inasmuch as all of the issues between these same parties had already been addressed. The Trial Court then stated:

Defendants’ counsel also asks the Court to bar Ms. Hayes from filing additional lawsuits on this subject matter. On the authority of *Alton Dixon v. Nike, Inc.*, the Court ORDERS Ms. Hayes shall not file additional lawsuits arising

out of this same subject matter until payment of court costs incident to her prior filings and this filing. This Order does not preclude an appeal of the Court's ruling in this case.

Hayes v. Strutton, No. E2003-00938-COA-R3-CV, 2003 Tenn. App. LEXIS 743, at ** 2 - 8 (Tenn. Ct. App. Oct. 27, 2003)(footnote in original).

Ms. Hayes then appealed to this Court and we affirmed the judgment of the Circuit Court holding that Ms. Hayes' claims were barred by the doctrine of res judicata. We also held that "Ms. Hayes' appeal is devoid of any merit and had no reasonable chance of succeeding. Accordingly, the Struttons and Lester are entitled to damages in accordance with Tenn. Code Ann. § 27-1-122." *Hayes v. Strutton*, No. E2003-00938-COA-R3-CV, 2003 Tenn. App. LEXIS 743, at * 12 (Tenn. Ct. App. Oct. 27, 2003). Ms. Hayes appealed our decision to the Tennessee Supreme Court. The Supreme Court denied her Rule 11 application for permission to appeal. *See Hayes v. Strutton*, No. E2003-00938-SC-R11-CV, 2004 Tenn. LEXIS 322 (Tenn. Apr. 5, 2004). Ms. Hayes then petitioned the Supreme Court to reconsider the denial of her Rule 11 application for permission to appeal. The petition to reconsider was denied. *See Hayes v. Strutton*, No. E2003-00938-SC-R11-CV, 2004 Tenn. LEXIS 436 (Tenn. May 10, 2004).

In August of 2002, Mr. Strutton sold the subject property to Ms. Opal Shaw. Having been unsuccessful in her numerous lawsuits involving frivolous claims against the Struttons, the United States Bankruptcy Court, United States Bankruptcy Court Judge John Cook, as well as various and sundry attorneys who had the misfortune of becoming involved in these cases, with the sale of the property Ms. Hayes found some new blood to drag through the legal system. Ms. Hayes filed this lawsuit, her most recent one, in the Hamilton County Circuit Court in July of 2003. This lawsuit makes the same claims as before with regard to how Ms. Hayes alleges she was defrauded out of her property. Ms. Hayes admits that Ms. Shaw "was not intentionally wrong. She is [just] inconsistent with my right of ownership." In other words, Ms. Shaw was sued simply because she now is the current record owner of the property having bought the property from Mr. Strutton.

The Circuit Court dismissed this lawsuit, essentially finding that the claims asserted by Ms. Hayes had been asserted by her over and over and over and over again in the past, and they were barred by the doctrines of res judicata and/or collateral estoppel. The Circuit Court noted that Ms. Hayes had a substantial amount of unpaid court costs arising from the previous lawsuits, and enjoined Ms. Hayes from filing any more lawsuits regarding the subject property. Ms. Hayes again appeals. In her notice of appeal, she cites the reasons for the appeal being "Judge Jackie Schulten's Obstruction of Justice, Bias and Prejudice."

Discussion

The factual findings of a trial court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal

issues, our review is conducted “under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts.” *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

In Ms. Hayes’ two previous appeals to this Court, we held that she had waived the issues set forth in her brief due to her failure to set forth any law or arguments explaining why the Trial Court erred when it concluded her claims were barred. This same fatal defect appears in her brief in this appeal, and the decision of the Trial Court, yet once again, must be affirmed.

Although Ms. Hayes’ appeal clearly is frivolous, Ms. Shaw’s counsel does not seek attorney fees incurred on appeal. We only can assume the reason for this is a desire not to waste anymore time or money in having to return to the Circuit Court to obtain a judgment which almost certainly never would be collectible. Ms. Hayes has wasted an enormous amount of resources pursuing these frivolous claims and we, like Ms. Shaw’s attorney, have no desire to waste any more.

Conclusion

The judgment of the Trial Court is affirmed. This cause is remanded to the Trial Court for the collection of costs below. The costs on appeal are assessed against the Appellant, Effie Louise Hayes.

D. MICHAEL SWINEY, JUDGE